

August 19, 2011 (8:30 a.m.)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	Docket Nos. 50-247-LR and 50-286-LR
ENTERGY NUCLEAR OPERATIONS, INC.)	ASLBP No. 07-858-03-LR-BD01
)	
(Indian Point Nuclear Generating Units 2 and 3))	
)	August 18, 2011

**ENTERGY'S ANSWER TO NEW YORK STATE'S AND CONNECTICUT'S
(1) MOTION TO STRIKE AND (2) MOTION FOR LEAVE TO FILE A REPLY**

Entergy Nuclear Operations, Inc. ("Entergy") respectfully submits this consolidated answer under 10 C.F.R. § 2.323(c) to the motions to strike and for leave to file a reply submitted by the States of New York and Connecticut (jointly, "New York").¹ For the reasons set forth below, New York's arguments lack legal and factual merit and should be rejected. The motions should therefore be denied.

A. Entergy's Reply to the NRC Staff's Answer Is Authorized by 10 C.F.R. § 2.341(b)(3)

In its motion to strike, New York contends that Entergy's August 16th reply to the NRC Staff's answer to its Petition for Review is "unauthorized."² That is not so. As a party to this proceeding, the Staff is authorized by Section 2.341(b)(3) to "file an answer supporting or opposing" a petition for review.³ That same provision authorizes Entergy, as the petitioning party, to "file a reply brief within five (5) days of service of *any* answer."⁴ There is no requirement that

¹ See The State of New York's and the State of Connecticut's Combined Motion to Strike Entergy's Unauthorized Reply in Support of NRC's Answer to Entergy's Petition for Review (Aug. 17, 2011) ("NYS Motion to Strike"); The State of New York's and the State of Connecticut's Combined Motion for Leave to File a Brief Reply to NRC Staff's Answer to Applicant's Petition for Review of LBP-11-17 (Aug. 16, 2011) ("NYS Motion for Leave"); The State of New York's and the State of Connecticut's Combined Reply to NRC Staff's Answer in Support of Entergy's Petition for Review of LBP-11-17 (Aug. 16, 2011).

² NYS Motion to Strike at 1-2.

³ 10 C.F.R. § 2.341(b)(3).

⁴ *Id.* (emphasis added).

Entergy file a single reply to all answers, particularly when, as here, those answers set forth disparate views regarding the matter under appeal.

Similarly mistaken is New York's contention that Entergy's reply is "irrelevant" or "inappropriate."⁵ New York's primary argument in this regard appears to be that the reply is somehow duplicative of the Staff's answer.⁶ But it is not. The Staff's answer focuses on the adverse effect of the Board's decision on this proceeding, while Entergy replies to that discussion to highlight the threat of immediate, serious, and irreparable harm to *Entergy and to the public interest*.⁷ And, contrary to New York's suggestion, the Indian Point retirement analysis cited by Entergy to substantiate the threat of harm to the public interest was not issued in final form until August 2, 2011—several days after Entergy filed its Petition for Review on July 29, 2011.⁸

As another licensing board has put it, it is "appropriate to take into account any information from a reply that legitimately amplifies issues presented in the original petition."⁹ In its reply, Entergy appropriately elaborated on two key points made not only by Entergy's Petition but also by the Staff in its answer: (1) as a matter of law, NEPA requires only a reasonable mitigation alternatives analysis and reasonable estimates; and (2) as a matter of fact, the Staff's Final Supplemental Environmental Impact Statement fully meets those NEPA requirements.¹⁰ There is

⁵ NYS Motion to Strike at 2. In this same vein, New York wrongly asserts that Entergy arguments "also presumptuously assume that, but for the Board's ruling, the hearing would result in approval of license renewal." *Id.* Entergy fully expects that all parties involved will make thorough evidentiary presentations, and that the Board will accord due weight to those presentations in its rulings on the merits of all admitted contentions.

⁶ *See id.* at 2.

⁷ *See* Applicant's Reply to the NRC Staff's Answer to Entergy's Petition for Review of LBP-11-17 at 2-3 (Aug. 16, 2011) ("Entergy Reply to NRC Staff Answer"). Entergy cited the threat of serious and irreparable harm in its Petition for Review. *See* Applicant's Petition for Review of LBP-11-17 Granting Summary Disposition of Consolidated Contention NYS-35/36 at 7 (July 29, 2011) ("Petition for Review").

⁸ Charles River Assocs., *Indian Point Energy Center Retirement Analysis* (Aug. 2, 2011), available at http://www.nyc.gov/html/dep/pdf/energy/final_report_d16322_2011-08-02.pdf.

⁹ *N. States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), LBP-08-26, 68 NRC 905, 919 (2008) (citing *PPL Susquehanna LLC* (Susquehanna Steam Electric Station, Units 1 and 2), LBP-07-4, 65 NRC 281, 302 (2007)).

¹⁰ *See* Entergy Reply to NRC Staff Answer at 3-5; Petition for Review at 15-18; *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station) CLI-10-22, 72 NRC __, slip op. at 9 (Aug. 27, 2010); NUREG-1437, Supp. 38, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Vol. 1

simply no legitimate basis for striking Entergy's reply, and New York's motion to strike Entergy's reply to the Staff's answer should therefore be denied.

B. New York's Reply to the Staff's Answer Is Not Authorized by 10 C.F.R. § 2.341(b)(3)

Unlike Entergy's reply, that of New York to the NRC Staff's answer is not authorized by 10 C.F.R. § 2.341(b)(3)—as underscored by the fact that New York filed a motion for leave to file its reply in the first instance. Moreover, the asserted bases for New York's motion—that the Staff presents “a newly-announced plan” for addressing LBP-11-17 and improperly raises new issues “beyond the four corners of Entergy's Petition”—rest entirely on mischaracterizations of the Staff's answer to Entergy's Petition for Review and prior Staff filings concerning Contention NYS-35/36.¹¹ The Commission should therefore deny New York's motion for leave to file a reply to the Staff's answer as unauthorized by 10 C.F.R. § 2.341(b)(3) and lacking legal or factual merit.

Respectfully submitted,

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Dated in Washington, D.C.
this 18th day of August 2011

at 5-4 to 5-13 & Vol. 3, App. G (Dec. 2010) (“FSEIS”); NRC Staff's Answer to “The State of New York and the State of Connecticut's Combined Motion for Leave to File A Brief Reply to NRC Staff's Answer to Applicant's Petition for Review of LBP-11-17” at 15-16 (Aug. 17, 2011) (“NRC Staff Answer”).

¹¹ NYS Motion for Leave at 1. See NRC Staff Answer at 2-4.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Entergy's Answer to New York State's and Connecticut's (1) Motion to Strike and (2) Motion for Leave to File a Reply" were served this 18th day of August, 2011, upon the persons listed below, by first class mail and e-mail as shown below.

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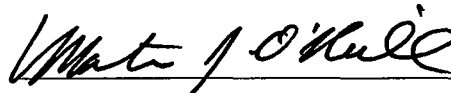
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